charges the debt, he is not subrogated to the rights of the creditor against the principal debtor. *Kimble* v. *Cummins*, 3 Met. (Ky.) 327; *Bancroft* v. *Abbott*, 3 Allen (Mass.) 524. But in limitation of this doctrine it is held that he does not lose his right to subrogation by waiving certain defenses which he may have against the creditor. *Beal* v. *Brown*, 13 Allen (Mass.) 114 (Statute of Frauds); *Shaw* v. *Loud*, 12 Mass. 447 (Statute of Limitations); *Ricketson* v. *Giles*, 91 Ill. 154 (coverture); *Simmons* v. *Goodrich*, 68 Ga. 750 (variation of risk). There seems to be no fixed rule as to the extent to which defenses may be waived, but the principal case is supported by authority in applying the principle liberally to underwriters. *Amazon Ins. Co.* v. *The Iron Mountain*, Fed. Cas. No. 270. See *Sun Mutual Ins. Co.* v. *Mississippi Valley Transportation Co.*, 17 Fed. 919, 923. It is submitted, however, that there could be no recovery if payment were made on an absolutely void policy, and that the language of the decision is very broad.

LANDLORD AND TENANT — RENT — LANDLORD'S STATUTORY LIEN. — A contract of sale of land provided that on the purchaser's failure to pay any annual instalment of the price he should pay rent for that current year, the relation of landlord and tenant should immediately arise, and the landlord's lien for rent come into being, with full right to distrain as if a contract of rental had been made at the beginning of the year. The purchaser, before his failure to pay the first instalment, mortgaged his crops to one who knew of the contract. A statute gave a landlord a lien for rent on his tenant's crops. *Held*, that the vendor has a landlord's lien superior to the mortgagee's lien. *Wilkins* v. *Fulcher*, 70 S. E. 691 (Ga., Ct. App.).

The statute might have been construed to protect a seller who has let the buyer into possession; for the latter is before the conveyance a tenant at will. *Harris* v. *Frink*, 49 N. Y. 24. *Contra*, *Griffith* v. *Collins*, 116 Ga. 420. He is liable for use and occupation, if he prevents a conveyance. *Gould* v. *Thompson*, 4 Met. (Mass.) 224. *Contra*, *Smith* v. *Stewart*, 6 Johns. (N. Y.) 46. And the statutory lien arises on an express agreement to pay for use and occupation. *Powell* v. *Hadden's Executors*, 21 Ala. 745. But the statute has been construed as not extending to the merely incidental tenancy arising from the relation of buyer and seller. *Taylor* v. *Taylor*, 112 N. C. 27. *Cf. Tucker* v. *Adams*, 52 Ala. 254. Therefore the principal case is incorrect if prior to the purchaser's default the relation was solely one of buyer and seller. *Wilczinski* v. *Lick*, 68 Miss. 596. It is correct if the contract also established an immediate relation of landlord and tenant within the meaning of the statute. *Bacon* v. *Howell*, 60 Miss. 362; *Jones* v. *Jones*, 117 N. C. 254. A contract merely requiring payment of rent upon the purchaser's failure to pay any instalment of the price has been held to create such a relation. *Collins* v. *Whigham*, 58 Ala. 438. *Cf. Thornton* v. *Strauss*, 79 Ala. 164. *Contra*, *Oxford* v. *Ford*, 67 Ga. 362. At any rate, the contract in the principal case, with its additional provisions, may be so construed. *Cf. British & American Mortgage Co.* v. *Cody*, 135 Ala. 622.

LAW AND FACT — PROVINCES OF COURT AND JURY — COMPETENCY OF WITNESS DEPENDING ON MAIN ISSUE. — On the sole issue whether the defendant was one Lee, who was admitted to have committed the murder charged, the defense offered to put Lee's wife on the stand to disprove the identity. The law of the state prohibited husband and wife from testifying for or against each other. The court refused the testimony on the ground that it believed the defendant was Lee. *Held*, that this was not error. *State* v. *Lee*, 64 So. 356 (La.).

It is well settled that questions relating to the admissibility of evidence are for the judge. *Bartlett* v. *Smith*, 11 M. & W. 483. This is so even if the question

involves determining the very point which the evidence is offered to prove. *Hichens* v. *Eardley*, L. R. 2 P. & D. 248. The principal case is the strongest test of the rule, as the inadmissibility of the wife's evidence depends in substance on the prisoner's guilt. The decision is important in that it meets the problem squarely, and does not attempt to evade the question by a vague ruling based upon the court's discretion.

LEGACIES AND DEVISES — VOID OR VOIDABLE BEQUESTS AND DEVISES — GIFT TO WIFE WHILE LIVING APART FROM HUSBAND. — A testator bequeathed stock to trustees to pay his daughter A the income during such time as her husband should be living apart from her; and in the event of their living together again, over. A's husband had deserted her and she still lived apart from him. *Held*, that the bequest contravenes no public policy and is valid. *Re Charleton*, 55 Sol. J. 330 (Eng., Ch. Div., Feb. 24, 1911).

The court, in pointing out that no illegality is here involved, lays stress on the facts that A had already been deserted by her husband and that the provision was intended, not to bring about a separation, but merely to provide for the decent maintenance of the wife until her husband should return. In the closely analogous case of restraints upon marriage, the donor's intent seems the controlling factor. But see 24 HARV. L. REV. 405. Thus a devise to a woman so long as she remains single, it appearing that the testator's object is not to prevent matrimony but only to provide for the devisee while she stays single, is valid. *Arthur* v. *Cole*, 56 Md. 100. See 14 HARV. L. REV. 614. "A purpose of intermediate maintenance will not be interpreted maliciously to a charge of restraining marriage." *Scott* v. *Tyler*, 2 Dick. 712, 722. The same rule is properly to be applied in situations such as the principal case presents. Thus it has been held that if the purpose of the gift is to induce the beneficiary to leave her husband, the provision violates public policy and the usual rules as to the effect of the illegality upon the condition or limitation apply. *Re Moore*, 39 Ch. D. 116.

MILITIA — CIVIL LIABILITY — ACTS DONE IN OBEDIENCE TO ORDERS. — The defendant, a militiaman on riot duty, under orders to arrest all passers-by carrying concealed weapons, arrested the plaintiff who had a pistol in his buggy. The plaintiff sued for false imprisonment. *Held*, that he may recover. *Franks* v. *Smith*, 134 S. W. 484 (Ky.). See NOTES, p. 656.

MINES AND MINERALS — LOCATION OF CLAIMS — EXCESSIVE LOCATION. — In locating a mining claim the defendant marked the boundaries of the side lines within three hundred feet of the supposed course of the center of the vein. Part of the ground so located proved to be more than three hundred feet from the true course of the vein. *Held*, that such part of the location is not excessive as against the claims of subsequent locators. *Harper* v. *Hill*, 113 Pac. 162 (Cal., Sup. Ct.).

The statute provides that a mining claim shall not exceed in width three hundred feet on each side of the middle of the vein at the surface. U. S. REV. STAT., 1878, § 2320. On the theory that the right to the surface continued, as under the prior act of 1866, to be incidental and dependent upon the right to the vein, it has been held that if a vein unexpectedly terminates before reaching an end line, the location beyond that point is void. *Patterson* v. *Hitchcock*, 3 Colo. 533. So also, in a case like the present, any ground proving to be more than three hundred feet from the vein has been held to be excess, though the location has not exceeded six hundred feet in width. *Southern California Ry. Co.* v. *O'Donnell*, 2 Cal. App. 499. Such a strict construction of the statute has been justly criticized, because it makes all locations "floating" until the exact course of the vein is ascertained, and because the acquisi-